NO. 21,953

United States Court of Appeals

FOR THE NINTH CIRCUIT

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, RICHMOND,
CALIFORNIA, LOCAL I-561,

Intervenor.

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court on petition of the Standard Oil Company of California, Western Operations, Inc. (hereafter, "the Company") to review and set aside an order of the National Labor Relations Board issued against it on June 30, 1967, and on the Board's cross-petition for enforcement of

that order, pursuant to Section 10(e) and (f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). The Board's Decision and Order (R. 28-40, 15-18) [1] are reported at 166 NLRB No. 45. The unfair labor practices herein having occurred at Richmond, California, where the Company operates an oil refinery complex, no jurisdictional issue is presented.

COUNTERSTATEMENT OF THE CASE

This case presents the single question whether the Company, by refusing to give its employees' certified bargaining representative a list of their names and addresses, violated Section 8(a)(5) and (1) of the Act. The facts underlying the Board's conclusion that the Company's refusal was unlawful, are set forth below.

A. The size and structure of the unit; the status and situation of the Union

The Company's oil refinery complex at Richmond, "among the largest in the world," covers four square miles on San Francisco Bay (R. 29; GCX 12, p. 1). Physically, it contains a maze of separate machinery units, called "plants," producing gasolines, oil, chemicals, and other materials, and ranging in size

[1] References designated "R" are to Volume I of the Record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of testimony reproduced in Volume II of the Record. References designated "GCX" and "RX" are to exhibits of the General Counsel and petitioner (respondent before the Board), respectively. Whenever in a series of references a semicolon appears, references preceding the semicolon are to the Board's findings; those following, to the supporting evidence.

from one-man operations to those tended by several hundred (R. 29; GCX 12, Tr. 127-128, 130). There, some 4600 persons are employed, 2600 by the Company and the others by related enterprises (R. 29; Tr. 33-34).

Since 1950, the Union [2] has been the certified representative for collective bargaining of a unit of production and maintenance employees in the manufacturing and purchase and stores departments of the complex, including the San Pablo Tank Farm (R. 29; GCX 2, Article 1). At the time of the hearing herein, the unit contained some 1500 of the Company's 2600 employees (R. 29; Tr. 33). Arriving at the refinery from the five or six county area in which they lived, mostly by automobile, the unit employees — like all others — entered the complex through four guarded gates (R. 29; Tr. 51, 60-62).

In recent years the unit has experienced considerable personnel turnover (R. 29; Tr. 33, 247). Thus, in 1965, the Company hired 155 new unit employees, and in the first half of 1966 (*i.e.*, prior to the hearing herein in July of that year) it had added 150, hiring "to maintain attrition at the rate of about 20 per month" (R. 29; Tr. 247-248). The Union did not receive the names of new employees at the time they were hired (Tr. 34, 247); and the collective bargaining agreement between the Company and the Union did not contain a union-shop clause. Rather, the contract provided for maintenance of membership, with an annual "escape" period of 30 days (R. 29; GCX 2, Art. 3). The contract required the Company to furnish seniority lists to the Union "at reasonable times," which by practice had come to mean twice a year (R. 31; GCX 2,

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[2] Oil, Chemical and Atomic Workers International Union, Richmond, California, Local 1-561, AFL-CIO.

Art. 8, Sec. 2(e) at p. 10, Tr. 35, 68-70, 167-169, 198). These lists contained the names but not the home addresses of the unit employees (R. 31; Tr. 35, 38). Although the effective dates of the lists were January 15 and July 15, the lists were not actually made available to the Union until 1 to 6 months after their compilation (R. 31; Tr. 69-72, 199-200). The most recent lists had been longest delayed, because of difficulties the Company experienced in instituting computer-compilation of the lists (R. 31; Tr. 70-73, 199-202). The list effective July 15, 1965 – which gave the Union notice of the names of all persons hired since January 15 of that year – was not finally delivered until October or November (Tr. 35, 200, 247, 70-71). And the list showing the unit work force as of January 15, 1966 – which reflected the substantial number of new hires in the preceding six months — concededly was not mailed to the Union until at least some 2½ months later (Tr. 72, 200-202, 143-146). Even then the Union did not receive a complete roster of those whom it represented, for the list did not contain the large (200 or so) chemical division: the Company withheld that list because of a pending grievance involving the division (RX 4, Tr. 151, 208-209, 212-213). [3]

The Company conducts an orientation program for all new employees in which it explains their conditions of employment and makes known company policy on, *inter alia,* labor relations and unions (R. 29-30). At an early meeting, a Company representative makes a statement about unions, telling the new unit members that they will be represented by the Union and that a copy of the collective agreement is in the packet of material given each of them, and reading a statement to the effect that

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[3] Although the grievance was pending before the July 15, 1965, list was compiled, the chemical division was included in that list (Tr. 249-250). It was also included in a seniority list dated January 15, 1966, which was apparently furnished the Union at the hearing below in July 1966, at which time the grievance was still unresolved (Tr. 208-213, 249).

"[i]t is the legal right and privilege of employees of the Company to become members or refrain from becoming members," that membership in a union "is not a condition of your employment with the Company," that employees will receive no benefit nor suffer any detriment because of union membership, and explaining the maintenance-of-membership provision including its escape clause (R. 29-30; Tr. 221-223, 232-236, RX 6). [4] In an "indoctrination" meeting later in the series,

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[4] The statement that is read provides in full (RX 6):

> You have been told of the many values which accrue to Standard Oilers with increasing service with the Company and the advantages of steady employment in a growing industry where you have the opportunity of making your job a career. These things have been emphasized with the sincere belief that working conditions, wages, insurance against loss of income and the cooperative spirit of the employees here are not equalled elsewhere.
>
> There are eight unions representing employees in the Refinery; seven craft and one production workers. It is the legal right and privilege of employees of the Company to become members or refrain from becoming members in such unions, as they may individually see fit. Such membership or non-membership does not affect their status as employees in any way.
>
> Most of our agreements with these unions contain a "Maintenance of Membership" provision. These provisions do not require you to become a member of the union but do require that if you do become a member you must continue to maintain such membership for the term of the agreement so long as you remain an employee, by paying the periodic union dues and initiation fees uniformly required by the union, or until Escape Clause is used by employee.
>
> Membership or non-membership in a union is not a condition of your employment with the Company. All employees will receive the same fair consideration for advancement opportunities and their privileges and benefits under established Company policies will in no way be affected by their membership or non-membership in a union. This is for your information if and when you may be urged to join or not to join any of the unions now representing employees in the Refinery.

the new employees are exposed more fully to the Company's philosophy by the oral reading to them of a company booklet entitled, "What We Believe" (R. 30; Tr. 32, 236-238, GCX 14). The booklet's section on labor relations asserts (GCX 14, p. 9):

> We sincerely believe that good employee relations can be maintained and essential employee needs fulfilled through sound management administration without the necessity of employee organization and representations [*sic*]. We respect an employee's right to present his grievances, regardless of whether or not he is represented by a labor organization. Whenever a group of employees does desire organization and representation, we are willing to discuss with individual employees or with representatives of the group any pertinent matters affecting them. We are opposed to any provision requiring that an individual either join or refrain from joining any labor organization as a condition of employment. We willingly accept the obligation to bargain with any bona fide labor organization legally selected by the employees as their agent, and we intend to make every effort to maintain the best possible relationship with the elected representatives of a bargaining unit. In any agreement reached, however, we feel management must retain the rights and authorities necessary to direct and control the Company's operations effectively and efficiently.

Additionally, all new employees are provided a bulky booklet, "You and Your Company," which under the heading, "What about unions," states (R. 30; Tr. 31, 222, 236-237, GCX 13, pp. 31-32):

> On the preceding pages of this booklet, we've tried to cover, in a general way, the many policies and programs developed by your Company's management to assure you fair treatment and to provide a rewarding career.
>
> We sincerely believe that good employee relations can be maintained and essential employee needs fulfilled through sound management administration, without the necessity of union organization and representation. Your Company's wages, hours, and working conditions are among the best in industry, and its employee relations policies are designed to promote fair play and mutual respect. Policies like these are essential for 43,000 people to work together effectively. This also requires a great deal of cooperation and understanding, and a healthy regard for the rights of others.
>
> As for union membership, it is your Company's belief that representation by an outside organization is not necessary in order for employees to enjoy fair treatment and good working conditions. However, this is something that all employees should decide for themselves after careful consideration of all the facts. While your Company recognizes your right to join a union, it does not believe

> that you should be forced to join a union as a condition of employment and is opposed to all forms of compulsory unionism.

"Old" employees as well are given orientation and indoctrination during training programs (R. 31; Tr. 27). The Union is not a participant in any of these meetings (R. 31; Tr. 26).

B. The Union's attempts to communicate with its constituents

Union membership in the unit has varied, with approximately 50 percent of the unit employees belonging to the Union at the time of the hearing (R. 29; Tr. 46). Union access to unit employees, both members and non-members, has been provided to some extent by contract and to some extent by independent union efforts (R. 31). As shown above, pp. 3-4 the Company provided periodic seniority lists, which did not contain the employees' home addresses. Pursuant to a contract provision allowing the Union to appoint "at least one steward for each unit in each section," it had designated 72 stewards who were concentrated in areas with a high proportion of union members (R. 31; GCX 2, Art. 19, Sec. 1 at p. 46, Tr. 78-80).[5] Moreover, many of the stewards were apparently inactive, having been appointed primarily to collect union dues during an interim between contracts when dues were not being checked-off by the Company (Tr. 82-86). Under a contract provision authorizing Union-maintained bulletin boards in Company-approved locations, there were

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[5] The contract permitted stewards' presence in the refinery "before or after their regular shift," but during his working hours a steward was authorized to leave his work only for the investigation or presentation of grievances (GCX 2, Art. 19, Sec. 3, 4 at pp. 46-47, and see Sec. 9 at pp. 47-48).

Union bulletin boards in regular locker rooms (R. 31; GCX 2, Art. 24 at p. 50, Tr. 47-48, 58-59, 123). They were not, however, an effective means of communication with the unit employees because other locker rooms were available in work areas (where there were no such boards) and because of the small amount of "change time" permitted employees who used the regular locker rooms (R. 31; Tr. 48-50, 59, 126-133, 153--161, 188-189).[5a]

The Union had also sought to reach the unit employees by handbilling at the plant gates (R. 31; Tr. 52-54, 55). [6] These efforts were restricted to two of the four gates because of automobile traffic hazards at the others (R. 31; Tr. 53). They were further limited in impact in that the Union had no means of ascertaining which of the many hundreds of persons using the gates were the employees it represented (R. 31-32; Tr. 54).

C. The Union's requests for employee addresses, the Company's denials, and the Company's mailing to unit employees during negotiations

On April 5, 1965, the Union wrote to the Company requesting the home addresses of the employees (R. 32; Tr. 15-16, GCX 3). Referring to the Company's access to the employees through its compulsory orientation program in which it "talk[ed] about Unions without Union representatives being present," the Union stated its need "at least [to] counter the Company propaganda by mass mailing" (R. 32; GCX 3). On

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[5a] By contrast, Company bulletin boards are spread throughout the refinery (R. 31; Tr. 58, 132).

[6] The Union's staff consists of one full-time person, plus a parttime office employee (Tr. 53).

April 14, the Union wrote again, and again referring to the Company's orientation meetings for employees "including employees performing work covered by our Agreement," the Union asserted that although the Company's approach was "a perfectly legal one, we believe that there is an issue of equal time" – it therefore asked for the opportunity to appear at the meetings "simply to give an orientation as to Union benefits . . ." (R. 32; Tr. 17-18, GCX 5).

The Company, on April 15, rejected the Union's initial request (R. 32; GCX 6). In its letter, the Company stated that its obligations, both "contractual and legal," were satisfied by providing seniority lists showing the name, classification and seniority date of all unit employees (*ibid.*). "[A]nd we are not willing," the letter continued, "to provide you with the home addresses of any of our employees" (GCX 6). [7]

Also on April 15, the Union sent the Company a second written request for addresses (R. 32; Tr. 19, GCX 7). Citing the Company's mailing to employees of the booklet "You and Your Company" (see *supra*, p. 7), the Union asked for "a complete mailing list of Standard Oil employees so that we may send them counter documentation and statements" (R. 32; GCX 7). On April 26, the Company rejected this request,

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[7] The Union's letter, by its counsel, was actually addressed to the Company's counsel who replied that he had sent it on to the Company as he "believe[d] the request for information is more appropriately handled by the Union representatives and Company representatives responsible for the administration of the collective bargaining agreement than by us as their lawyers" (GCX 4). A Company management representative testified to a Company policy "that lists contain[ing] the names and addresses, particularly addresses, of employees are not given to anyone" and that "we felt that inasmuch as this was a violation of that policy, we better check with our attorney . . . who told us that as far as he was concerned, there was no legal nor contractual obligation to make an exception in the case of a union request, and so we denied the request" (Tr. 225).

reiterating the position that neither law nor contract required its fulfillment (R. 32; GCX 8). The following day, the Union's request to appear at orientation meetings was likewise denied: stating its belief that employee participation or nonparticipation in union activities "is strictly a matter of individual choice," the Company averred that "if the Company were to arrange for such union presentations at employee orientation meetings, this might lead employees to believe that the Company is actively encouraging or sponsoring their participation in union activities. We wish to avoid any such inference." (R. 32; GCX 9).

During May 1965, Company and Union began bargaining about changes in certain benefit programs referred to in the contract (R. 32; Tr. 41-44). While negotiations were in progress, on June 21, the Company mailed to all unit employees a statement of its bargaining position and on the status of the negotiations together with copies of a document that it had read to the Union at a bargaining session (R. 32; Tr. 41-42, GCX 15). The statement announced that the subject benefits were already effective for all employees other than those represented by the Union, and informed the unit members that they, too, "would" receive the benefits as of June 1 "if" agreement were reached with their Union by the end of the month (*ibid.*).

A week after distribution of the Company's communication to the unit employees, the Union filed the original charge herein, alleging that the Company had violated the Act by, *inter alia*, "refus[ing] to give the Union a list of the names and addresses of employees in the bargaining unit so that the Union can even send out a mailing to counter Company propaganda" and "send[ing] mailings to employees concerning collective bargaining with the Union, but refus[ing] to furnish

the mailing address of said employees so that the Union can respond to the Company's position in the mailing" (GCX 1(a)).[8]

In February, 1966, the parties' collective agreement automatically renewed for another year (R. 32; Tr. 14-15). Early the next month, the Union made yet another written request for the employees' home addresses, *i.e.*, "a list of all the names and addresses of the employees in the collective bargaining unit" (R. 33; Tr. 21-22, GCX 10). As its representative elaborated in testimony, the Union needed the information because experience had shown that "if we were to have any kind of fair and equitable position at the bargaining table, that we were going to have to devise some means of communicating with the employees that we represent,"[9] because of the Company's indoctrination

[8] During the period of negotiations, which in July culminated in an agreement, the Union held membership meetings, one of which it opened to non-members as well (Tr. 54-55). Only two non-members attended (Tr. 55). To inform the non-members of the meeting and their invitation to it, the Union had had to rely on handbilling at the refinery gates, word-of-mouth transmission in the plants, and a telephone answering service which it maintained whereby an employee (or anyone else) could, by dialing a regular city number, obtain a Union newscast (Tr. 55-58). (Here again, in publicizing the Union telephone number so that employees could call, the Union was remitted to bulletin-board posting or handbilling (Tr. 58). The Company, by contrast, maintained a telephone news service in the refinery available to all employees from any telephone in the plants (Tr. 56-57).)

Asked at the hearing why the Union made no request for addresses during the May-July bargaining, its representative explained that it could see no point in an oral request at the bargaining table "because we had made three formal written requests and were in the process of preparing this charge, which was filed in June" (Tr. 44-45).

[9] Particularly was this so in view of the Company's direct communication to the employees of its bargaining positions, in both 1964 and 1965 (Tr. 38, 39, *supra*, p. 11). But independently of that, the Union sought to be able to inform the employees confidentially of contemplated bargaining proposals (Tr. 162).

program for new employees who received no comparable introduction to the benefits of the Union, and because of the constant pressure "to organize our people" in the absence of a union-shop agreement (Tr. 38-40, 162). [10] But the Company persevered in its denial, on the ground (as stated by its counsel) that the *contract* required no more than seniority lists (R. 33; GCX 11). Thereafter, the Union filed with the Board an amended charge of Company violations of Section 8(a)(1) and (5) of the Act by continuing refusal to furnish the Union the employees' names and addresses (GCX 1(c)). On May 6, 1966. the instant complaint issued, alleging that the Company had unlawfully refused and continued to refuse the statutory bargaining representative's request for the unit employees' names and addresses, "information relevant to collective bargaining and the administration of the current collective bargaining contract" (GCX 1(e), pp. 2-4).

THE BOARD'S CONCLUSIONS AND ORDER

On the foregoing facts the Board (one member dissenting) found that the addresses of the unit employees were relevant to the Union's statutory responsibilities for bargaining and contract administration, that this information "lay exclusively in [the Company's] possession" and was not otherwise available to the Union, and that the Company had not offered a reasonable justification for withholding it (R. 34-36). Accordingly, the Board concluded that the Union had a legal right

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[10] As shown *supra* p. 5, the Company informed new employees of the annual 30-day "escape" period during which those who had joined the Union could leave it. Additionally, as authorized by the contract, the Company posted on its bulletin boards notices informing the employees generally of the "escape" period (GCX 2, Art. 3 at p. 3, Tr. 10, 161, 169).

to demand the address list, and the Company a correlative legal duty to meet the Union's request (R. 36, 37-38). The Company's refusal to furnish the information therefore violated Section 8(a)(5) and (1) of the Act (*ibid*).

To remedy the unfair labor practices found, the Board ordered the Company to cease and desist from that conduct and from interfering with its employees' statutory rights in any like or related manner (R. 38). Beyond this, the Company is required to provide the Union, upon request, a list of the home addresses of the unit employees, and to post the customary notices (R. 38-39, 40).

ARGUMENT

THE BOARD PROPERLY FOUND THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY DENYING THE UNION'S REQUEST FOR A LIST OF THE NAMES AND ADDRESSES OF THE EMPLOYEES WHOM IT REPRESENTED

A. The governing legal principles

"There can be no question," the Supreme Court recently observed, "of the general obligation of an employer to provide information that is needed by the bargaining representative [of his employees] for the proper performance of its duties." *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 435-436. Deriving as it does from a union's responsibilities as exclusive representative of all the unit employees, the employer's duty of disclosure is commensurate with those responsibilities. Thus, since it is "the well settled obligation of the bargaining agent not only to negotiate new contracts but also to police and administer existing agreements" *(Curtiss-Wright Corp. v. N.L.R.B.*, 347 F.2d 61, 68 (C.A. 3)), a union is entitled to data reasonably required for its effective performance

in both capacities. And because the "broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation" of all the unit employees [11] – members and nonmembers, opponents as well as adherents – the union likewise has an enforceable right to information in the employer's possession which is relevant to the discharge of this responsibility.

In short, the sole criterion for determining the producibility of information is its relevance, or reasonable necessity, for the union's proper performance of its representative role. This is true whatever the nature of the material sought, though the manner in which relevance is to be ascertained varies. Thus, information directly related to wages, hours, or other terms and conditions of employment (the mandatory subjects of bargaining), or to the union's ability to administer an existing contract, is "presumptively relevant" to the union's representative duties. Such information is, *prima facie*, required to be produced. See, *e.g., Boston Herald-Traveler Corp. v. N.L.R.B.*, 223 F.2d 58, 62 (C.A. 1); *Timken Roller Bearing Co. v. N.L.R.B.*, 325 F.2d 746 (C.A. 6), cert. denied, 376 U.S. 971; *Int'l Telephone and Telegraph Corp. v. N.L.R.B.*, 382 F.2d 366, 372-373 (C.A. 3). And see *Curtiss-Wright Corp., supra*, 347 F.2d at 68-69. Where, however, the information requested is not so obviously pertinent to the subject

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[11] *Humphrey v. Moore*, 375 U.S. 335, 342. See *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192; *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248, 255; *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-338 (statutory obligation of an exclusive bargaining representative "to make an honest effort to serve the interests of all [unit] members"); *Vaca v. Sipes*, 386 U.S. 171; *Miranda Fuel Co.*, 140 NLRB 181, enforcement denied on grounds not here material 326 F.2d 172 (C.A. 2); *Hughes Tool Co.*, 147 NLRB 1573; *Local 12, United Rubber Workers v. N.L.R.B.*, 368 F. 2d 12 (C.A. 5), cert. denied, 389 U.S. 837.

matter of collective bargaining or to the bargaining process itself, so that relevance cannot be presumed, the union must demonstrate that the intelligence for which it has asked bears significantly upon its ability to carry out its statutory mandate. For example, information about an employer's financial situation is not on its face so related to collective bargaining or representation that it must always be produced upon request. But when an employer resists a union's wage demands on the ground that its financial situation does not permit them, relevance is demonstrated and the union's request for substantiating information must be met. *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149; *N.L.R.B. v. Western Wirebound Box Co.*, 356 F.2d 88 (C.A. 9); *Metlox Mfg. Co. v. N.L.R.B.*, 378 F.2d 728 (C.A. 9), cert. denied, 67 LRRM 2231. See *Int'l Telephone and Telegraph Corp. v. N.L.R.B.*, 382 F.2d 366, 370-371 (C.A. 3); *Puerto Rico Telephone Co. v. N.L.R.B.*, 359 F.2d 983, 986-987 (C.A. 1); *N.L.R.B. v. Celotex Corp.*, 364 F.2d 552, 553-554 (C.A. 5), cert. denied, 385 U.S. 987. So, too, detailed information about non-unit employees to which a union might not otherwise be entitled is required upon a showing that it is germane to the integrity of the unit represented. *Curtiss-Wright, supra*, 347 F.2d at 69-71. *N.L.R.B. v. Goodyear Aerospace Corp.*, ___ F.2d ___ (C.A. 6), 67 LRRM 2447, 2448. See *Int'l Telephone and Telegraph Corp., supra*, 382 F.2d at 371-372; *Hollywood Brands, Inc.*, 142 NLRB 304, 305 n. 2, enforced, 324 F.2d 956 (C.A. 5), reh. denied, 326 F.2d 400, cert. denied, 377 U.S. 923. Once established, whether by a presumption arising from the nature of the data sought or by particular facts of the situation, the union's reasonable necessity for the information fixes the employer's duty to produce; and his failure to grant the union's request is an unlawful refusal to bargain even though the employer's good faith is clear and no other refusal to bargain has occurred. *N.L.R.B. v. Woolworth Co.*, 352 U.S.

938, rev'g *per curiam* 235 F.2d 319 (C.A. 9); *N.L.R.B. v. Feed and Supply Center, Inc.*, 294 F.2d 650, 652-653 (C.A. 9); *Timken Roller Bearing Co., supra,* 325 F.2d at 754; *Fafnir Bearing Co. v. N.L.R.B.,* 362 F.2d 716, 721 (C.A. 2); *Curtiss-Wright Corp., supra,* 347 F.2d at 67-68; *Taylor Forge and Pipe Works v. N.L.R.B.,* 234 F.2d 227, 231 (C.A. 7), cert. denied, 352 U.S. 942; *J. I. Case Co. v. N.L.R.B.,* 253 F.2d 149, 152-156 (C.A. 7); *Puerto Rico Telephone Co., supra,* 359 F.2d at 986.

B. The employee address list is relevant and necessary

The employee address list here repeatedly requested and refused does not directly relate to a particular subject of bargaining, nor to a specific dispute arising during the terms of and under a contract. Its significance to the Union, and thereby its relationship to the bargaining process, is both more general and more profound. It is the Union's status as employee representative that gives relevance to the employee information sought, for the Union must be able to carry on the dialogue on which representation depends if it is to meet its statutory responsibility fairly to represent the employees. And as shown in the Counterstatement, the Union, although the certified representative of the 1500 unit employees, was as a practical matter unable to communicate with them. Their homes were scattered through a geographic area encompassing 5 or 6 counties; they entered and left the refinery with thousands of others from whom they were indistinguishable as all traversed (chiefly by automobile) the same few gates; even their identities were disclosed to the Union only semiannually at best. The employees were scarcely approachable away from the work place by anyone without an address list (*supra,* pp. 3-4). While those employees who chose to join the Union presumably thereby made their addresses known,

the collective agreement between Company and Union did not require union membership and membership in fact hovered around 50% of the unit work force (*supra*, pp. 3, 8). (The Union's representative duties of course ran to all.) Within the four square miles of the refinery with its many scattered work areas, neither the limited exposure afforded by union bulletin boards in the separate locker rooms nor the Union's steward system enabled effective (much less confidential) communication between the Union and its constituents (*supra*, pp. 8-9). Experience had taught the Union that it could not reach those for whom it spoke by the means at hand alone. Indeed, when the Union attempted to hold a meeting of all the employees, non-union as well as union, during negotiations in 1965, restricted as it was in even getting its invitation to the non-members, only two such individuals attended (*supra*, p. 12, n. 8).

Thus stultified in informing the employees about bargaining proposals it was contemplating submitting to the Company or about "the position of the union versus the position of the company" at the bargaining table (Tr. 162, 38-40), and equally without means of ascertaining the employees' views on any of these matters, the Union was further faced with the fact that the Company could and did express its sentiments on union matters directly to the unit members. Repeatedly and forcefully, the Company apprised all new employees of its view that union representation was unnecessary, and did so both orally and in writing in statements that sought to persuade the new workers to that view (*supra*, pp. 4-8). More than 300 new employees were added to the unit during the period in which the Union made its requests for a name-and-address list (*supra*, p. 3). Yet the Union whose representative mandate required it to speak for these employees had no means of reaching them to introduce itself and to explain the meaning of representation and its

consequences in terms of employee rights, restrictions and privileges. Moreover, during the negotiations in process in May and June of 1965, the Company used just such a mailing list as the Union had previously requested to inform the unit employees individually of the Company's bargaining position and of the status of the negotiations as seen from its perspective (*supra*, p. 11).

On these facts, we submit, the Company's legal duty to supply the requested employee address list is established. The Union's reasonable necessity for such a list "is apparent," as the Board found, "from a comparison of the Union's statutory duty of fair representation with the difficulties it faced in attempting to reach those to whom it owed such duty" (R. 34). Indeed, if there could be any question that relevance is thus established, the Company itself gave the answer by its conduct in communicating directly with the unit employees on the subject of representation while at the same time denying the Union's repeated requests for a list to enable it to do likewise.

This is, of course, not to say that an employer must always facilitate communication between his employees and their union. Rather, it is to recognize the principle, previously applied in this and other contexts, that where union access to the employees is necessary for full vindication of their statutory rights and requires the action or assent of their employer, then that action or assent is compelled by the Act. Thus, where in administering a collective agreement a union needed time-study data that could be acquired only if its own expert were admitted to production areas of the plant to make his own studies on the employees as they performed their regular tasks, the employer was obligated to permit such entry and access. *Fafnir Bearing Co. v. N.L.R.B.*, 362 F.2d 716 (C.A. 2). And where as a practical matter employees were

unavailable for discussions with their certified representative except on the ships on which they were employed, the Act required their employers to permit union officials to board the ships both for the processing of grievances (*Richfield Oil Corp. v. N.L.R.B.*, 143 F.2d 860 (C.A. 9); *N.L.R.B. v. Cities Service Oil Co.*, 122 F.2d 149 (C.A. 2)) and "for other mutual aid and protection of the employees represented" including collection of dues and distribution of union literature (*Richfield Oil Corp., supra*). Similarly even in the situation where, the employees being unrepresented, a stranger union is engaged in organizational efforts among employees whose free time as well as work time is spent on the employer's premises "so that union organization must proceed upon the employer's premises or be seriously handicapped" (*Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 799), the employer must permit union personnel reasonable access to his employees on his property. *N.L.R.B. v. Lake Superior Lumber Co.*, 167 F.2d 147, 151-2 (C.A. 6) (practical difficulties for union in attempting contact otherwise than as permitted by Board order); *N.L.R.B. v. S & H Grossinger's Inc.*, 372 F.2d 26, 29-30 (C.A. 2) (apart from solicitation on employer's premises employees "cannot be reached by any means practically available to union organizers"); cf., *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105, 111-114. [12] On the same principle, an employer

[12] As the Supreme Court stated in *Babcock & Wilcox*, *supra*, 351 U.S. at 113, "The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others. Consequently, if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." The approval in *Babcock & Wilcox* (351 U.S. at 111) of the *Lake Superior Lumber Co.* case, *supra*, as well as similar Supreme Court statements in *Republic Aviation*, *supra*, 324 U.S. at 799, have rendered invalid the inhibitions in *Richfield Oil* and *Cities Service Oil*, *supra*, on organizational activities by the certified representative within the employer premises there opened to the unions.

has been required to accede to the request of his employees' union for a list of the employees' addresses. In *Kenai Packers*, 144 NLRB 1122, the Seattle-based union had requested, *inter alia*, a list of the names and addresses of current employees in the unit of crew members on the employer's salmon vessels operating out of Kenai, Alaska, some 1500 miles distant from Seattle. *Id.* at 1124-1125, 1128. The data sought could have been germane to dues collection, enforcement of contract wages, union policing of compliance with other benefit provisions of the contract and with contractually-established employment preferences. *Id.* at 1128. "Since [the union's] limited request, therefore, clearly called for data fundamental to the viability of the parties' contractual relationship," the Board found the requested data necessary "to provide some basis for the union's 'intelligent representation'" of the employees, and held the employer's refusal to furnish it a violation of Section 8(a)(5) and (1) of the Act. *Id.* at 1128, 1130.[13] So here, "[a] s the full information [which the Union required properly to represent the employees] lay exclusively in [the Company's] possession, and was not otherwise available to the Union for reasons earlier stated, the Union had a right to demand this information from [the Company]," and the Company, the Board held, "had a correlative obligation to furnish it" (R. 36).

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[13] Compare *McCulloch Corp.*, 132 NLRB 201, where the union demanded the addresses of all unit employees in connection with certain bargaining issues. The addresses were not "essential to bargaining on [these] or any other issue[s]" (as the employer had declared in refusing to give the addresses), and the Board found that no "reasonable ground for making the request and necessity for the information" had been shown. *Id.* at 209-210. No question of necessity for communication with the employees was raised, and apparently none could have been since both union and employer distributed publications to the employees during their year of negotiations. *Id.* at 205.

The Company says that this result is wrong because the Union in making its initial request for names and addresses stated that it wished to "counter the company propaganda," a purpose which (the Company argues) is unrelated to the Union's duties as bargaining representative. We show below that the purposes for which the Union needed and sought the data were not so limited; that the quoted objective would suffice to oblige production by the Company even had it stood alone; and that the Company's refusal to furnish the list was in any event based not on lack of relevancy but rather on asserted Company policy that "the names and addresses, particularly addresses" of its employees are not given to "anyone."

C. The Company's reasons for refusing to give the Union the employees' addresses are without merit.

As shown in the Counterstatement, when the Union made its first and second requests for the list in April 1965, it referred to the Company's orientation program in which management repeatedly (and *ex parte*) discussed unions, urged the Company's view that unions were not needed by Company employees, and emphasized that employees not only were not required to join any union but — if they did so — could avail themselves of the "Escape Clause". The Union was concerned that the employees hear also the Union's side of the story. Hence, the Union asked for the name-and-address list to enable it to "counter the company propaganda" with "counter documentation and statements"(*supra*, pp. 9-10). Both requests were rejected outright, the Company asserting that its full "contractual and legal" duty was met by provision of the periodic seniority lists on which the Company showed names, classifications, and seniority dates of the employees

(*supra*, pp. 10, 11). Matters did not end there. During the mid-term negotiations that shortly ensued, the Company, using the very list that the Union had requested, mailed to each unit employee information on the Company's position in the negotiations as well as its views on the status of the negotiations, which included the assertion that the employees would enjoy new benefits retroactively if their Union agreed by a designated date, but not otherwise (*supra*, p. 11). And so, believing that a renewed request for the list would be futile, the Union filed an unfair labor practice charge. There, in challenging the Company's refusal to supply it the unit employees' names and addresses, the Union again specified its need to send mailings to "counter Company propaganda" and, additionally, its need to respond to the Company's mailing "concerning collective bargaining with the Union" (*supra*, pp. 11-12 and n. 8). Nevertheless, when the Union subsequently made yet another written request for the list, the Company again declined, this time stating only (and irrelevantly) that the contract did not require its production.

Thus, it can hardly be questioned that the relevance of the requested list to the Union's ability to carry out its duties as certified representative was put to the Company prior to the commencement of these proceedings, or to the Board for decision. The charges and the complaint herein alleged that the Company's continuing refusal to furnish the requested information was unlawful in that the list was information relevant to the Union's proper performance of its collective bargaining responsibilities. And at the hearing the Union detailed the circumstances that had led to its requests: it referred again to the Company's interventions with the employees during negotiations which meant that "if we [the Union] were to have any kind of fair and equitable position at the bargaining table, that we were going to have to devise some means of communicating with the employees that we represent" (Tr. 38-39); it pointed out that because of the many situational impediments to its reaching its constituents it had no means of informing them in confidence of contemplated bargaining proposals (Tr. 162); it spoke again of the Company's orientation program

and, therefore, the Union's "absolute necess[ity]" to be able to communicate with the new employees "in order to inform them of the existing collective bargaining agreement, what they are entitled to, so forth" [14]; and it cited the "constant pressure" upon it to organize, stemming from the absence of a union-shop clause and the other factors previously set forth (Tr. 40).[15]

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[14] As previously noted, the Company hired some 300 new unit employees between the time of the Union's first and its third request for the names and addresses (*supra*, p. 18).

[15] In its briefs both to the Trial Examiner and to the Board the Company argued that nothing in the situation or the Union's words met the legal test for producibility of information, which the Company contended requires only those data relevant to mandatory subjects of bargaining. Before the Trial Examiner, for example, the Company maintained that even if it were shown that the Union needed employee home addresses in order to contact them to obtain job-related information for the investigation and processing of grievances, "Section 8(a)(5) does not obligate an employer to furnish this information" because it has "no apparent connection with wages, hours and working conditions [and] the burden is on the union to clearly demonstrate that the information is relevant to a subject of mandatory bargaining . . ." And before the Board the Company asserted that none of the Union reasons set forth in the text *supra* "has any direct bearing on the Union's ability to bargain intelligently or to evaluate and process grievances," and contended that "the record evidence (such as it is) is that the Union says it needs this 'information' from the employer — not to *learn* what it must know to bargain intelligently — but to *tell* employees what the Union already knows and believes." Thus to limit the dialogue between constituent and representative to one-way communication is, we believe, an erroneous view of the law.

In any event, the Union's statement that it intended to use the address list to counter Company propaganda against it, far from negating the Company's duty to produce (as the Company contends), demonstrates why in the situation here the Union was entitled to what it requested. For the Union was not a stranger to the scene, an outsider trying to convince the employees that their interests and strength lay in organization and union representation. That choice had been made, and the Union designated the employees' bargaining agent. Consequently, as their sole spokesman in all matters pertaining to the terms and conditions of their employment, the Union was legally obligated to speak for all and to seek to do so effectively. Manifestly, its effectiveness was dependent upon (though not guaranteed by) mutual understanding between the representative and those represented, its strength upon their support. But here the Company was endeavoring to persuade the Union's constituents that representation was unnecessary – and in the case of the several hundred new employees hired during this period, the Company's position was impressed upon them months before the Union would receive even their names. [16] As the Board pointed out, while the Company was "privileged thus to express its view . . . the Union was justified in inferring that [the Company's] purpose was to weaken employee support of the Union and thereby to reduce, if not indeed to destroy, the Union's strength and effectiveness as a bargaining agent" (R. 36). Thus the Union "had a legitimate interest" (*ibid.*) in responding to the Company's assertions by presenting its perspective on the matter –

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[16] Because of the Company's difficulties with its new computer, to which it had transferred the compilation of the seniority lists, these lists – which provided the Union's first notification of new hires and were prepared only semiannually at best – were delayed for periods up to several months beyond their normal delivery date (*supra*, p. 4).

in the Board's words, "[by] attempt[ing] to show, for example, why the employees needed the Union, how the Union had served them in the past and how it might in the future, why its contract administration actions and its bargaining proposals deserved their backing, and why it was in the employees' interest to provide membership and other support to their bargaining agent" (*ibid.*). The Company does not suggest any legitimate interest it may have in keeping the employees whom it exhorts insulated from the countervailing arguments of their statutory representative, and we know of none. Indeed, it is now a standard rule in Board election proceedings, following *Excelsior Underwear, Inc.*, 156 NLRB 1236, that prior to an election an employer must furnish to a Board agent a list of the names and addresses of the employees eligible to vote, which list is then made available to all parties. A major purpose of the rule, which has been held valid in virtually all litigation passing on the question, [17] is "to make certain that employees are able to exercise an informed and reasoned choice after hearing all sides of the question concerning the desirability of union representation" (*N.L.R.B. v. Rohlen*, 385 F. 2d 52, 55 (C.A. 7). If employees are entitled to hear from all sides before choosing whether to be represented, surely they are entitled to no less when, that choice having been

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[17] *N.L.R.B. v. Hanes Hosiery Division, Hanes Corp.*, 384 F.2d 188 (C.A. 4), pet. for cert. pending, No. 982, this term; *N.L.R.B. v. Rohlen*, 385 F.2d 52 (C.A. 7); *N.L.R.B. v. British Auto Parts, Inc.*, 266 F. Supp. 368 (C.D. Cal.), appeal pending (No. 21883, C.A. 9); *N.L.R.B. v. Teledyne, Inc.*, 66 LRRM 2408, 2410-2411 (N.D. Cal.), appeal pending (No. 22354, C.A. 9); *N.L.R.B. v. Wyman-Gordon Co.*, 270 F. Supp. 280 (D. Mass.), appeal pending (No. 7000, C.A. 1); *N.L.R.B. v. Wolverine Industries Div., Mid-States Metal Products, Inc.*, 64 LRRM 2060, 2187, 2189 (E.D. Mich.); *Swift & Co. v. Solien*, 274 F. Supp. 953 (E.D. Mo.); *N.L.R.B. v. Beech-Nut Life Savers, Inc.*, 274 F. Supp. 432 (S.D. N.Y.). See also *N.L.R.B. v. Q-T Shoe Co.*, 67 LRRM 2356 (D. N.J.).

made, their employer nonetheless avails himself of his special access to them to continue to campaign against representation (and, for that matter, for his position on matters upon which the employer and union are bargaining).

The Company's true position here, we submit, was revealed by management testimony as to its reaction to the Union's request. It is Company policy, its witness averred, "that lists contain[ing] the names and addresses, particularly addresses, of employees are not given to anyone," a policy that would be violated by providing such a list to the Union (Tr. 225). In short, the Company would treat a certified union as a stranger to the industrial scene rather than a legitimate participant. This approach is seen also in the wholly frivolous contention that had the Company provided the Union the addresses sought, it would thereby have violated Section 8(a)(2) of the Act. In the Company's curious construction of that section, saving only that employees may be permitted to confer with the employer during working hours without loss of pay, an employer must refrain from actions that could be seen as "assisting a union [including an incumbent union] with material aid designed to make it easier for that union to strengthen its support among its employees" (Br., p. 17). Thus would disappear much of the duty imposed by Sections 8(d) and 8(a)(5): agreement to check-off union dues, for example, as the Company here has agreed to do, would be lawless, as would agreement to utilize a union hiring hall — a mandatory subject of bargaining, as this Court has held. See *N.L.R.B. v. Tom Joyce Floors, Inc.*, 353 F.2d 768, 771 (C.A. 9); accord, *N.L.R.B. v. Houston Chapter, Associated General Contractors*, 349 F.2d 449 (C.A. 5), cert. denied, 382 U.S. 1026; and cf., *Local 357, Int'l Bhd of Teamsters v. N.L.R.B.*, 365 U.S. 667. Moreover, as we have seen, in proper circumstances an employer must admit union personnel to his

premises not only to facilitate performance of the union's representative functions but even to facilitate purely organizational activities. [18] See *supra*, pp. 19-20. In sum, the Company cannot relieve itself of the duty to supply relevant requested information by showing that the information will be helpful to the Union.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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[18] It is well settled that an employer does not violate Section 8(a)(2) by cooperating with a union in its efforts to communicate with his employees, provided that equal opportunities to communicate are not denied opposing forces and that the employer does not engage in other acts of assistance constituting interference with his employees' free choice. See *N.L.R.B. v. Majestic Weaving Co.*, 355 F.2d 854, 856-857, 858-859 (C.A. 2); *Kimbrell v. N.L.R.B.*, 290 F.2d 799, 802 (C.A. 4); *Perry Coal Co. v. N.L.R.B.*, 284 F.2d 910, 912, 913-914 (C.A. 7); *Morganton Full Fashioned Hosiery Co.*, 107 NLRB 1534-1535.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered Brief conforms to all requirements.

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